

## **SEC. 12-326. RESTAURANTS, TAVERNS, AND NIGHT CLUBS.**

- A. Intent. The intent of this Section is to:
1. Clearly define these land uses.
  2. Classify these uses by zone district.
  3. Set development parameters for each type of use.
  4. Establish specific and unique processing procedures.
  5. Determine the appropriate granting authority.
  6. Establish revocation procedures.
- B. Applicable uses. There are three types of use applicable to this Section: restaurants serving alcoholic beverages, taverns and night clubs. Restaurants not serving alcoholic beverages are not subject to this Section (12-326). These three uses are defined in Subsections 12-105-R-5., 12-105-N-0.5., and 12-105-T-0.5, respectively.
1. If the business serves alcoholic beverages, it is required to obtain the appropriate license from the State of California, Department of Alcohol Beverage Control (ABC); and
    - a. Pursuant to [Section 12-304](#), they must obtain approval of a conditional use permit for the retail sale of alcohol.
    - b. All night clubs, whether or not they sell alcoholic beverages require a conditional use permit.
  2. Only a Night Club may provide a dance floor for customer dancing.
- C. Applicable Zone Districts. Each of the uses subject to this Section has been added as a use permitted subject to a conditional use permit to each applicable zone district, except in the C-4 (Central Trading) and C-C (Civic Central) zone districts.
1. Use within the C-4 (Central Trading) and C-C (Civic Center) zone districts are still subject to the operational standards set forth in the Tables I, II & III.
- D. Plan Consistency. All entitlements filed under the auspices of this Section, shall be consistent with all applicable Plans.
- E. Special Standards of Development. The following special standards have been crafted for Restaurants with alcohol sales, Taverns and Night Clubs. If there is a conflict between these standards and the standards of an applicable adopted Plan, the more restrictive standard shall govern unless said adopted plan contains specific language stating that the provisions of the plan prevails.
1. Table I, Table II and Table III, below, establish specific criteria for four standards. They are, with a brief description:
    - a. Setback. Minimum horizontal distance, measured in feet, between the building, or portion of a building, occupied by the use, and the closest property line of existing residential uses, or property planned or zoned for residential uses.
    - b. Floor Area. Maximum gross floor area of the occupancy, measured in square feet.
    - c. Time to Stop Sales, Service and Consumption of Alcohol. Hour for each day of the week at which time the sale, service and consumption of alcoholic beverages shall cease. All alcoholic beverages must be removed from the customer area at the appointed hour. Each business may establish the time of "last call" for ordering alcoholic beverages.
    - d. Granting Authority. Identifies the granting authority for each type of application.

2. Whenever Tables I, II and III specifies "No additional requirements", the standards of the District and/or adopted Specific/Community Plan in which the project is located shall apply.
3. The special standards of Tables I, II and III are not subject to modification by Variance or Minor Deviation Application.

TABLE I: Restaurant serving alcohol

Zone District	Special Standards of Development			
	Setback	Floor Area	Time to Stop Sales, Service and Consumption of Alcohol	Granting Authority
All Districts where listed as permitted	No additional requirements		12:30 am; Nightly	Director
Mixed Use Project	When a restaurant is included as part of a mixed use project. It is subject to the provisions of the Mixed Use Ordinance <a href="#">Section 12-325</a> , and the Special Standards of this Table. However, if the restaurant is located in a building of three or more stories, and there is a residential use within said building the closing hour of alcohol service may be extended to 2:00 am. nightly.			

TABLE II: Tavern

Zone District	Special Standards of Development			
	Setback	Floor Area	Time to Stop Sales, Service and Consumption of Alcohol	Granting Authority
C-P	Minimum setback: 50-ft		10:00 pm Nightly	Director
	If setback is less than 200-ft:	Then maximum floor area is 2,500 sq. ft.		
	If setback is 200-ft	Then maximum floor area is 4,000		

	or more:	sq. ft.		
	No additional requirements if located within a Hotel and access is only through the Hotel lobby		2:00 am Nightly	Director
C-1	Minimum setback: 50-ft		12:30 am: Sun. thru Thurs, 1:00 am. Fri. & Sat.	Director
	If setback is less than 200-ft:	Then maximum floor area is 2,500 sq. ft.		
	If setback is 200-ft or more:	Then maximum floor area is 4,000 sq. ft.		
C-2	Minimum setback: 50-ft		12:30 am: Sun. thru Thurs. 2:00 am. Fri. & Sat.	Director
	If setback is less than 200-ft:	Then maximum floor area is 3,000 sq. ft.		
	If setback is more than 200-ft. but less than 300-ft:	Then maximum floor area is 4,000 sq. ft.		
	If setback is equal to or more than 300-ft but less than 400-ft:	Then maximum floor area is 5,000 sq. ft.		
	If setback is 400-ft or more:	Then maximum floor area is 6,000 sq. ft.		
	If a proposal for a project does not meet the requirements for these special standards (i.e., setback, floor area or time to stop alcohol service) of development, except that there always shall be a minimum setback of 50-feet, refer to Subsection 12-326-G for details.			Planning Commission
C-3	If setback is less than 200-ft.	No additional requirements	2:00 am Nightly	Planning Commission

	If setback is 200-ft. or more.			Director
C-4	No additional requirements		2:00 am Nightly	By-Right Director
C-5	If setback is 50-ft. or less	Maximum floor area is 4,000 sq. ft. except if located within the Tower District Specific Plan area then there is no maximum floor area.	2:00 am Nightly	Planning Commission
	If setback is 50-ft. or more.			Director
C-6	If setback is 50-ft. or less		2:00 am Nightly	Planning Commission
	If setback is 50-ft. or more			Director
C-R	No additional requirements		2:00 am Nightly	Director
C-M	Minimum setback: 50-ft.		2:00 am Nightly	
	If setback is less than 200-ft	If floor area is 2,500 sq. ft. or less		Director
		And floor area is more than 2,500 sq. ft.		Planning Commission
	No additional requirements when located within the boundaries of the Central Area Community Plan			Director
M-1-P	Minimum setback: 50-ft.	If floor area is 2,500 sq. ft. or less	2:00 am Nightly	Director
	If setback is less than 200-ft	And floor area is more than 2,500 sq. ft.		Planning Commission
	If setback is 200-ft. or more			Director
M-1	Minimum setback:	If floor area is 2,500 sq. ft. or less	2:00 am Nightly	Director

	50-ft.	And floor area is more than 2,500 sq. ft.		
	If setback is less than 200-ft.			Planning Commission
	If setback is 200-ft. or more			Director
	No additional requirements when located within the boundaries of the Central Area Community Plan.			
M-2	Minimum setback: 50-ft.	If floor area is 2,500 sq. ft. or less	2:00 am Nightly	Director
	If setback is less than 200-ft.	And floor area is more than 2,500 sq. ft.		Planning Commission
	If setback is 200-ft. or more			Director
M-3	Minimum setback: 50-ft.	If floor area is 2,500 sq. ft. or less	2:00 am Nightly	Director
	If setback is less than 200-ft.	And floor area is more than 2,500 sq. ft.		Planning Commission
	If setback is 200-ft. or more			Director
CC	No additional requirements		2:00 am Nightly	By-Right Director
C-I	Not a permitted use in this District.			
Mixed Use Project	When a tavern is included as part of a mixed use project. It is subject to the provisions of the Mixed Use Ordinance <a href="#">Section 12-325</a> , and the Special Standards of this Table. However, if the tavern is located in a building of three or more stories and there is a residential use within said building, the closing hour may be extended to 2:00 am. nightly.			

TABLE III: Night Club

Zone District	Special Standards of Development			
	Setback	Floor Area	Time to Stop Sales, Service and Consumption of Alcohol	Granting Authority
C-P	Not a permitted use unless located within a Hotel and access is only through the Hotel lobby: Then no additional requirements.			Director
C-1	Not a permitted use in this District			
C-2	Minimum setback: 50-ft		12:30 am: Sun. thru Thurs. 2:00 am Fri. and Sat.	Planning Commission
	If setback is less than 200-ft:	Then maximum floor area is 3,000 sq. ft.		
	If setback is 200-ft or more, but less than 300-ft:	Then maximum floor area is 4,000 sq. ft.		
	If setback is 300-ft or more but less than 400-ft:	Then maximum floor area is 5,000 sq. ft.		
	If setback is 400-ft or more:	The maximum floor area is 6,000 sq. ft.		
	If a proposal for a project does not meet the requirements for these special standards of development standards (i.e., setback, floor area, or time to stop alcohol service), except that there always shall be a minimum setback of 50-feet, refer to Subsection 12-326-G for details.			Planning Commission
C-3	If setback is less than 500-ft.	No additional requirements	2:00 am Nightly	Planning Commission
	If setback is 500-ft. or more			Director

C-4	No additional requirements	2:00 am Nightly	By-Right Director
C-5	Not a permitted use unless located within the boundaries of the Tower District Specific Plan area; Then no additional requirements.	2:00 am Nightly	Planning Commission
C-6	No additional requirements.	2:00 am Nightly	Planning Commission
C-R	No additional requirements.	2:00 am Nightly	Planning Commission
C-M	Not a permitted use unless located within the boundaries of the Central Area Community Plan, then no additional requirements.	2:00 am Nightly	Director
M-1-P	Not a permitted use.		
M-1	Not a permitted use unless located within the boundaries of the Central Area Community Plan, then no additional requirements.	2:00 am Nightly	Director
M-2	Not a permitted use.		
M-3	Not a permitted use.		
CC	No additional requirements.	2:00 am Nightly	By-Right Director
C-1	Not a permitted use.		
Mixed Use Project	When a night club is included as part of a mixed use project. It is subject to the provisions of the Mixed Use Ordinance <a href="#">Section 12-325</a> , the property development standards of the underlying zone district, and the Special Standards of this Table.		

F. Additional Criteria. Each application shall be subject to the following criteria.

1. Operational statement. The operational statement shall include, but not be limited to the following:
  - (1) Applicant's name, business address, & contact information;
  - (2) Information as to persons doing business under fictitious names, members of partnerships, and officers of corporations or associations;
  - (3) Exhibits that include a site plan and a detailed floor plan of the premises;
  - (4) An evacuation plan in case of emergency;
  - (5) Hours of operation;
  - (6) Security Plan (including efforts to ensure that the parking area is monitored to prohibit loitering and crowd and line control);
  - (7) Efforts that have been taken to discuss the proposal with neighbors;
  - (8) Copy of a valid Business Tax Certificate, if in business; and
  - (9) Any additional information as the Director may reasonably require to properly evaluate the application.
2. Multiple phases of operation. If a business proposes to operate in more than one mode of operation, e.g., a restaurant that converts to a night club in the evening, each phase shall be evaluated and conditions shall be assigned accordingly. Each phase must be allowed in the district.
3. Posting hours of operation and address. The owner and/or proprietor and/or applicant shall be responsible to conspicuously post the hours of operation for each phase type (i.e., restaurant, nightclub) near the entrance of the establishment. It shall be 8.5x11 inches in size, to be provided for by the City. This posting shall be made available to City officials upon request. Additionally, the address of each facility shall be posted in compliance with City codes.
4. Security. The Police Department shall make a recommendation to the Director for security measures for each application based upon the function of the establishment as described in the operational statement.
5. Third Party Promoters. Whenever an event is promoted by a Third Party the owner and/or proprietor and/or operator of the premises shall require that said Third Party obtain a business tax certificate from the City prior to holding such event.
6. Loitering.
  - a. The owner and/or proprietor, and/or operator of the establishment is responsible to provide supervision (i.e., security) to prevent loitering in the immediate vicinity of the establishment.
    - (1) During operating hours, the owner and/or proprietor shall prohibit loitering in the parking area.
    - (2) After closing hours, the immediate vicinity of the establishment including its designated parking area, shall be cleared within 15 minutes. The designated parking area, shall be oriented away from residences as much as possible, and shall be clearly depicted on the development plan submitted for the conditional use permit.
  - b. In the event that there is more than one establishment sharing a parking area, adjustments to the conditions of approval to each establishment shall be made so that there is a shared responsibility.
7. Patio Areas.
  - a. Patios should be oriented and designed away from residences and must be buffered to ensure that noise is mitigated per the Noise Ordinance.



- b. If a proposed patio area is located within 1,000 feet of property planned or zoned for residential uses and is proposed to be used after 10 pm. an acoustical analysis must be conducted to ensure compatibility with the adopted City of Fresno Noise Ordinance. The analysis shall be submitted at the time of application.
  - c. An acoustical analysis is not required when the patio area is either a part of a mixed use project that contains a residential component, is located within the boundaries of the Central Area Community Plan south of Divisadero Street, or the designated special area of the Tower District Specific Plan. However, if in a residential mixed use project, there are residences outside of the site within 1,000 ft., an analysis is still required.
8. Noise. Noise levels shall not exceed adopted levels per Fresno Municipal Code [Chapter 10](#), Article 1.
9. Special Days of Celebration. The hours of operation, as illustrated in Tables I, II and III above, for the sale of alcohol on special days of celebration shall be the same as designated for weekend service. They are:

Federal Holidays	Other Days of Celebration
New Years Day	New Years Eve
Birthday of Martin Luther King, Jr.	Mardi Gras Day
Washington's Birthday	St. Patrick's Day
Memorial Day	May 5th (Cinco de Mayo)
Independence Day	Halloween
Labor Day	Thanksgiving Day Eve
Columbus Day	
Veterans Day	
Thanksgiving Day	
Christmas Day	

In addition, given the ethnic and cultural diversity of the city, the Planning Director, in consultation with the Police Chief, may authorize up to four other recognized cultural days of celebration per year per establishment upon review and approval.

10. Non-operating Rule. Whenever all of the rights granted by a conditional use permit are discontinued, the following rules to reestablish the use shall apply:

- a. One Year or less: The same operator or a different operator may reestablish the use pursuant to the preexisting conditional use permit and all conditions applicable thereto.
- b. More than One Year: A new conditional use permit is required.

11. Dancing: Refer to [Section 12-327](#)

G. Procedures. Procedures for the processing of an application shall be in accordance with the provisions of [Section 12-405](#) and [12-406](#), with the following modifications:

1. Granting Authority. If, as specified in Tables I, II and III the granting authority is the:

- a. Director. The application shall be processed pursuant to Sections [12-405](#) and [12-406](#)
- b. Planning Commission. A duly noticed public hearing shall be conducted by the Commission who will approve, approve with conditions or deny the application.
- c. An application for a Tavern or Night Club located in the C-2 District that does not comply with either the setback, floor area, or time to stop alcohol service, shall be subject to the following:
  - (1) Neighborhood Meeting. The applicant shall conduct a public meeting, at its expense, prior to submitting their application. The purpose of this meeting is to acquaint the neighborhood with the proposed operation and to receive comment. The applicant shall provide participants with a detailed operational statement which shall also be submitted to the City. A detailed report of the meeting shall be submitted to the city with the application.
    - (i) Notices of the meeting shall be mailed by first class mail, a minimum 10 days prior to the meeting date, to every owner whose name and address appears on the last equalized County Assessment Roll for any property within 500 feet of the exterior boundaries of the subject property, or District if within a shopping center. Proof shall be submitted to the City that such a notice was mailed.
    - (ii) The meeting shall be held at a place acceptable to the Director.
    - (iii) The meeting shall begin between the hours of 6:00 p.m. and 7:00 p.m.
    - (iv) The meeting shall not be held on a Friday, Saturday, Sunday, or on any of the Special Days of Celebration, as listed in Subsection 9, above.
  - (2) . This matter shall be presented to the Planning Commission.

2. Public Notice.

- a. All public notices shall be mailed to property owners within 500 feet of the subject site.
  - (1) If the project is the sole use of the property (not a part of a shopping district), measure from the property lines of the subject site; or
  - (2) If the project site is part of a shopping district, measure from the exterior boundaries of the shopping center (District boundaries).
- b. Posting. The owner/proprietor/applicant shall be responsible to post required notices in a prominent place near the entrance to the premises. It shall be 11x17 inches in size, to be provided for by the City.

H. Revocation.

- 1. Procedure. For good cause, a special permit authorizing the establishment of a restaurant, tavern or night club, may be revoked pursuant to Section 12-405-E. In addition to the examples of what constitutes "good cause" in Section 12-405-E, examples also include, but are not limited to:
  - a. Frequent calls for service to the Fresno Police Department regarding on-site issues, defined as occurring more than 1.5 times the average number of such response for

property of a similar size and character and as further set forth and defined in the Management of Real Property Ordinance.

- b. When police calls for service where Part 1 Violent Crimes, such as aggravated assault, rape, assault with a deadly weapon, attempted murder, murder or an assault on a peace officer occur twice in a rolling twelve month period.
  - c. Failure to comply with any condition contained in the special permit.
  - d. Not functioning as the use approved by the special permit; as a restaurant, as a tavern or as a night club.
2. Director Initiation. The revocation process will be initiated by the Director within 10 business days after notification in writing of the following circumstances:
- a. Frequent calls for service regarding on-site issues, defined as occurring more than 1.5 times the average number of such response for property or a similar size and character.
  - b. Resolution of a citation for failure to comply with a condition of the special permit is not forthcoming within 15-days.
  - c. If there is resolution to a citation in a timely fashion, but there are additional citations issued three times in a rolling six month period.

I. Existing Uses.

- 1. Nonconforming: Existing establishments that have been legally established under previous regulations but do not conform to current law, may continue to operate as a recognized nonconforming use pursuant to [Section 12-317](#), but shall not be subject to the amortization period set forth therein for Nonconforming Uses of Land or Nonconforming Uses of Buildings.
- 2. Loss of Nonconforming Status: Changes to an existing use that would cause the loss of a nonconforming status are, but not limited to, the following:
  - a. When a business is closed for one continuous year.
  - b. Change of use, e.g., from restaurant to a night club or if a single use would like to establish multiple uses.
  - c. An increase of floor area (including patio area) for the existing use.
  - d. A request to close at a later time.
  - e. Pursuant to §23790 of the Business and Professional Code, State of California, a change in license type for the sale of alcoholic beverages (ABC License: i.e., from type 41 to type 47) shall be considered an interruption of use, requiring that the new license type be consistent with current zoning and land use regulations.
- 3. When a nonconforming status is lost, any subsequent use must be consistent with current zoning and land use regulations and a new conditional use permit is required.

(Added Ord. No. 2009-38, § 54, 11-30-09; Am. Ord. 2010-37, §§ 14, 15, eff. 10-8-10).

## **SEC. 12-327. DANCING**

- 1. Dance types are being reduced from four dance permits (CLASS A. Cafe Dance, CLASS B(1), Social Dance, CLASS B(2) Social Dance, and CLASS C, commercial dance) to two dance types, Single Event and Night Club, while acknowledgement and status is given to valid dance permits that were issued by the Finance Department in accordance with the previous Ordinance but do not meet the current requirements as required by this Ordinance.
  - (a) The following conditions shall define and apply to dances:

- (1) Type I: Single Event: Single event dances may be conducted by nonprofit organizations where such dances are not open to the general public. A total of 10, single event dances may be held per calendar year per nonprofit organization. A Conditional Use Permit is not required.
- (2) Type II: All other dances. may only be conducted in a Night Club per Sections [12-326](#) and [12-327](#). A Conditional Use Permit is required.

(b) Hours of dancing:

#### Hours of Dancing

Age of Participants	Closing Hour	Extensions
Under 18 years of age	12 midnight	—
Under the age of 21	1 o'clock am	—
21 and over	2 o'clock am	5 o'clock a.m. on New Years day
	Night Clubs may stay open until 4 o'clock a.m. in the Central Area Community Plan boundaries south of Divisadero Street.	
Restricted Hours	No dancing shall be held between the applicable closing hour and 8 o'clock a.m. of any day.	

(c) Existing dance permits

- (1) A dance permit granted pursuant to the previous ordinance for what was classified as Cafe Dance or Commercial Dance, is considered valid in regard to the dance permit, and may continue to operate pursuant to that approval.
2. The status is relinquished when any of the items per 12-326-I are met.